

Town of Fort Myers Beach  
Agenda Item Summary

Blue Sheet Number: 2011-011

**1. Requested Motion:**

**Meeting Date: Feb. 7, 2011**

Approval of a Special Exception in the Downtown Zoning District to allow consumption on premises of alcoholic beverages in a restaurant providing an outdoor seating area within 500 feet of a dwelling unit under separate ownership.

**Why the action is necessary:**

Due to the Surf Club's proximity to a dwelling unit a Special Exception is required for outdoor consumption on premises.

**What the action accomplishes:**

Enables the Surf Club Restaurant to have outdoor consumption on premises for the proposed deck area.

**2. Agenda:**

☐ Consent  
☐ Administrative  
☒ Public Hearing

**3. Requirement/Purpose:**

☒ Resolution  
☐ Ordinance  
☐ Other

**4. Submitter of Information:**

☐ Council  
☒ Town Staff – Comm. Dev.  
☐ Town Attorney


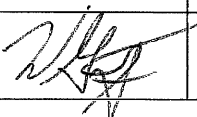
**5. Background:**

The property is currently the Surf Club Restaurant, which has administrative approval for consumption on premises. The applicant is proposing to construct a 645 square foot deck on the subject property and is requesting a special exception for outdoor consumption on premises for the proposed deck area.

**6. Alternative Action:**

**7. Management Recommendations:**

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

**9. Council Action:**

☐ Approved    ☐ Denied    ☐ Deferred    ☐ Other

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 11- 01  
FMBSEZ2010-0005 (Surf Club Resolution)

WHEREAS, applicant Cermak's Surf Club, LLC., by and through Bruce Cermak, owner (collectively "applicant") has requested a special exception in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages, in a restaurant providing an outdoor seating area within 500 feet of a dwelling unit under separate ownership; and

WHEREAS, the subject property is located at 1167 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0150E.001A and the legal description of the subject property is Lot 1, Block E, CRESCENT PARK ADDITION, recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida,

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on January 11, 2011 and recommended approval of the applicant's request, for the reasons set forth more fully in LPA Resolution 2011-0001 and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on February 7, 2011, with the affidavit of publication for such advertisement attached hereto as Exhibit A and hereby incorporated as reference; and

WHEREAS, at the hearing the Town Council gave full and complete consideration to the request of Applicant, the LPA resolution and other LPA materials, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and a review of the application and the standards for granting special exceptions, the Town Council makes the following findings of fact, conditions for approval, and conclusions:

The Town Council **APPROVES/DENIES** the applicant's request for a special exception to permit outdoor consumption on premises in the DOWNTOWN zoning district, ***with such approval subject to the following conditions.***

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. *The area of the subject property used for outdoor consumption on premises must be confined entirely to the proposed deck shown on the site plan attached hereto and incorporated herein by reference as Exhibit B. This area must be enclosed by a 42 inch railing, except for access points, further delineating the outdoor consumption area from other areas of the subject property.*
2. *Sales, service, and consumption of alcoholic beverages must not begin earlier than 11:00 AM and must end no later than 10:00 PM each day.*

3. Conditions in prior approvals, including the applicant's May 29, 2009 COP (FMBCOP2009-0001) will remain in effect except where such conditions have been modified by this action.
4. Music and other audible entertainment are prohibited before 11:00 AM and after 9:00 PM of each day in outdoor seating areas, and must comply at all times with applicable noise ordinances.
5. A landscaping plan is to be provided at the time of development order or permit.

#### **RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions **exist/do not exist** that make the requested approval, as conditioned, appropriate:

*The Comprehensive Plan notes in the Consensus on Commercial Uses: "The present concentration of commercial uses in the Times Square area is good for Fort Myers Beach. Despite severe congestion during peak season and a general seediness that had been developing, Times Square has always provided an urban beach environment that does not exist anywhere else in Lee County, and which cannot be easily duplicated because of today's floodplain regulations. The recent CRA improvements have sparked a renewed interest in Times Square among most islanders and has spurred a healthy movement to upgrade existing buildings."*

*Also, as contemplated in the Comprehensive Plan, the Times Square area (Downtown Core) has continued to emerge as a vibrant urban core for the Town. Therefore, the area can support a more intensive mix of uses which is consistent with the applicant's request.*

2. The requested special exception, as conditioned, **is/is not** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:

*The applicant's request for outdoor consumption on premises is fitting with the vision for the area. The subject property is located in the Times Square area (Downtown Core). The Comprehensive Plan describes a vision for this area that "boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an 'Old Estero Island' character to the buildings."*

*Further, in both the Community Design Element and the Future Land Use Element, the Comprehensive Plan describes a vision for the Times Square area (Downtown Core) as a "nucleus of commercial and tourist activities" with pedestrian oriented commercial uses that enhance the experience of both the resident and visitor. Again, the applicant's request is*

*consistent with this vision, by providing additional venue for the enjoyment of the outdoor environment of Fort Myers Beach.*

3. The requested special exception, as conditioned, **meets or exceeds/does not meet or exceed** all performance and locational standards set forth for the proposed use.

*The very nature of this application indicates that the requested use of outdoor consumption on premises is not a use allowable by right on the subject property. It is however, a use permitted by special exception. The applicant's request is appropriate at this location due to the subject property's location in the Times Square area (Downtown Core) and is consistent with the goals, objectives, policies and intent of the Comprehensive Plan; which describes a vibrant tourist commercial district.*

4. The requested special exception, as conditioned, **will/will not** protect, conserve, or preserve environmentally critical areas and natural resources:

*The proposed outdoor consumption application will have virtually no negative effects on environmentally critical areas and natural resources. The subject property is within an existing commercial district and the proposed deck is to be located on an area of the site that was previously disturbed.*

5. The requested special exception, as conditioned, **will/will not** be compatible with existing or planned uses and **will/will not** cause damage, hazard, nuisance or other detriment to persons or property:

*The subject property and the area immediately surrounding it are within the Pedestrian Commercial future land use category. The Comprehensive Plan's vision for the Times Square area (Downtown Core) encourages commercial uses be maintained and/or increased, including outdoor cafes. Staff feels the applicant's request is compatible with the area and its vision.*

6. The requested special exception, as conditioned, **will/will not** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

*The outdoor consumption on premises of alcoholic beverages on the subject property will be required to comply with the applicable standards in the Fort Myers Beach LDC including but not limited to Sections 34-678(7)(e)(1), 34-678(7)(e)(4), and 34-1264. Staff recommends finding that the requested use, as conditioned, is in compliance with applicable zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.*

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The foregoing Resolution was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and second by Council Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

Larry Kiker, Mayor  
Tom Babcock, Council Member  
Alan Mandel, Council Member

Bob Raymond, Vice Mayor  
Jo List, Council Member

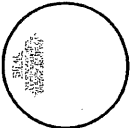
DULY PASSED AND ADOPTED THIS \_\_\_\_\_ day of February, 2011.

Town Council of the Town of Fort Myers Beach

By: \_\_\_\_\_  
Larry Kiker, Mayor

Approved as to legal sufficiency:      ATTEST:

By: \_\_\_\_\_ By: \_\_\_\_\_  
Marilyn Miller, Esquire      Michelle Mayher, Town Clerk  
Town Attorney

[illegible]

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2011-001  
FMBSEZ2010-0005 (Surf Club Resolution)

WHEREAS, applicant Cermak's Surf Club, LLC., by and through Bruce Cermak, owner (collectively "applicant") has requested a special exception in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages, in a restaurant providing an outdoor seating area within 500 feet of a dwelling unit under separate ownership; and

WHEREAS, the subject property is located at 1167 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0150E.001A and the legal description of the subject property is Lot 1, Block E, CRESCENT PARK ADDITION, recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida,

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on January 11, 2011; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and a review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for a special exception to permit outdoor consumption on premises in the DOWNTOWN zoning district, ***with such approval subject to the following conditions.***

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. *The area of the subject property used for outdoor consumption on premises must be confined entirely to the proposed deck shown on the site plan attached hereto and incorporated herein by reference as Exhibit B. This area must be enclosed by a 42 inch railing, except for access points, further delineating the outdoor consumption area from other areas of the subject property.*
2. *Sales, service, and consumption of alcoholic beverages must not begin earlier than 11:00 AM and must end no later than 10:00 PM each day.*
3. *Conditions in prior approvals, including the applicant's May 29, 2009 COP (FMB COP2009-0001) will remain in effect except where such conditions have been modified by this action.*

4. *Music and other audible entertainment are prohibited before 11:00 AM and after 9:00 PM of each day in outdoor seating areas, and must comply at all times with applicable noise ordinances.*
5. *A landscaping plan is to be provided at the time of development order or permit.*

#### **RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions **exist** that make the requested approval, as conditioned, appropriate:

*The Comprehensive Plan notes in the Consensus on Commercial Uses: "The present concentration of commercial uses in the Times Square area is good for Fort Myers Beach. Despite severe congestion during peak season and a general seediness that had been developing, Times Square has always provided an urban beach environment that does not exist anywhere else in Lee County, and which cannot be easily duplicated because of today's floodplain regulations. The recent CRA improvements have sparked a renewed interest in Times Square among most islanders and has spurred a healthy movement to upgrade existing buildings."*

*Also, as contemplated in the Comprehensive Plan, the Times Square area (Downtown Core) has continued to emerge as a vibrant urban core for the Town. Therefore, the area can support a more intensive mix of uses which is consistent with the applicant's request.*

2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:

*The applicant's request for outdoor consumption on premises is fitting with the vision for the area. The subject property is located in the Times Square area (Downtown Core). The Comprehensive Plan describes a vision for this area that "boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an 'Old Estero Island' character to the buildings."*

*Further, in both the Community Design Element and the Future Land Use Element, the Comprehensive Plan describes a vision for the Times Square area (Downtown Core) as a "nucleus of commercial and tourist activities" with pedestrian oriented commercial uses that enhance the experience of both the resident and visitor. Again, the applicant's request is consistent with this vision, by providing additional venue for the enjoyment of the outdoor environment of Fort Myers Beach.*



3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use.

*The very nature of this application indicates that the requested use of outdoor consumption on premises is not a use allowable by right on the subject property. It is however, a use permitted by special exception. The applicant's request is appropriate at this location due to the subject property's location in the Times Square area (Downtown Core) and is consistent with the goals, objectives, policies and intent of the Comprehensive Plan; which describes a vibrant tourist commercial district.*

4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources:

*The proposed outdoor consumption application will have virtually no negative effects on environmentally critical areas and natural resources. The subject property is within an existing commercial district and the proposed deck is to be located on an area of the site that was previously disturbed.*

5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property:

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6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

*The outdoor consumption on premises of alcoholic beverages on the subject property will be required to comply with the applicable standards in the Fort Myers Beach LDC including but not limited to Sections 34-678(7)(e)(1), 34-678(7)(e)(4), and 34-1264. Staff recommends finding that the requested use, as conditioned, is in compliance with applicable zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.*

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Van Duzer** and second by LPA Member **Ryffel**, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair	Aye
Carleton Ryffel, Member	Aye
Joe Kosinski, Member	Aye
Hank Zuba, Member	Aye

Bill Van Duzer, Vice Chair	Aye
Rochelle Kay, Member	Aye
John Kakatsch, Member	Aye

DULY PASSED AND ADOPTED THIS 11 day of January, 2011.

LPA of the Town of Fort Myers Beach

By: Joanne K. Shamp  
Joanne Shamp, LPA Chair

Approved as to legal sufficiency: ATTEST:

By: Marilyn W. Miller By: Michelle Mayher  
Marilyn Miller, Esquire Michelle Mayher, Town Clerk  
LPA Attorney

PROPOSED OUT DOOR DECK  
645 SQ. FT. TOTAL

**MINUTES  
FORT MYERS BEACH  
Local Planning Agency**

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931

**Tuesday, January 11, 2011**

**I. CALL TO ORDER**

Meeting was called to order at 9:13 AM by Chairperson Joanne Shamp. Other members present:

Bill Van Duzer  
Joe Kosinski-emergency excuse  
John Kakatsch-late  
Carleton Ryffel  
Hank Zuba  
Rochelle Kay

LPA Attorney Marilyn Miller

Staff present: Community Development Director Walter Fluegal, Tina Ekblad, Planning Coordinator, Leslie Chapman, Zoning Coordinator, and Keith Laakkonen, Environmental Sciences Coordinator

**II. PLEDGE OF ALLEGIANCE and INVOCATION**

Ms. Kay

**III. MINUTES**

A. Minutes of November 12, 2010

**Motion: Mr. Van Duzer moved to accept the minutes, as recorded.**

**Seconded by Mr. Zuba;**

**A few name spelling corrections were noted and corrected.**

**Vote: Motion passed 5-0.**

**IV. PUBLIC HEARINGS**

A. Special Exception-Surf Club FMB SEZ2010-0005

The attorney swore witnesses and Affidavit of Publication of Public Hearing was noted. The chair polled the members for any ex-parte communications. Mr. Van Duzer stated that he knows both of the property owners but has had no communications regarding this item. Ms. Shamp had a site visit only and all other members had no communications.

Presentation by applicant:

Mr. Gene Whitley addressed the LPA on behalf of the applicant. He referred to the staff report, agreeing with the bulk of it and pointing out to the members that staff has recommended approval. He explained that the applicant is asking for permission to install a deck where the retention area is located now so that patrons can enjoy food and drink outside, as well as smoking.

Mr. Van Duzer asked what the operating hours would be for the proposed deck and applicant said that although they would keep the same hours, there are no plans for music or entertainment outside.

Ms. Kay asked for clarification as to the exact location of the deck and pointed out that there was mention of "there could be music until about 9:00 PM" but applicant reiterated that there are no plans for that now.

Mr. Ryffel pointed out that the staff is recommending the consumption on premises until 10:00 PM and asked if the applicant understands that; applicant acknowledged that he does.

Mr. Zuba asked if the handicapped access points are controlled and how. Mr. Whitley said there is a 10 ft. opening in the deck, which is adjacent to the sidewalk used to enter the front door.

Ms. Shamp pointed out the staff recommendation on pg. 6 regarding music "from 11:00 AM to 9:00 PM of each day." She also asked a question about the exact location of the deck and applicant gave more specific details and said that the deck is meant to be pervious and will not hinder drainage.

Presentation by staff:

Tina Ekblad, Planning Coordinator, addressed the meeting on behalf of staff and gave a brief history of the property, which was the Waffle House site and had been approved by the county in 1998. The applicant purchased this property in April of 2009 and is asking for a special exception for consumption on premises outdoors, which is required due to the fact that the property is within 500 ft. of a dwelling under separate ownership. Ms. Ekblad confirmed that the staff recommended approval with certain conditions regarding timing and any music/entertainment. For the record, she read a letter addressed to Mr. Fluegel from George Gannon, owner of the Beacon Motel, dated January 10, 2011 (attached):

*"...the above special exception request for outdoor service of alcohol...presents a serious issue of late night alcohol service, music and loud noise to the overnight guests of the motel. Presently there is loud music coming from the Lani Kai, which interferes with our guest's ability to sleep at night."* The letter goes on to explain that the writer could not be at the hearing but wants his *"serious concerns known (to the*

*Town)...and request that should the Agency consider any approval, that conditions be imposed controlling loud music, noise and time curfews."*

Mr. Zuba asked why the application process takes so long. Mr. Fluegal responded that the process is getting better but has basically taken such time due to many changes in personnel and staff assignments. He also asked if there was a landscape plan for the property and suggested that, in the future, all applications of this nature include one due to the obvious impact on the area. Mr. Fluegal agreed.

Mr. Ryffel asked if any type of state permits were required and it was agreed that there were no requirements for any. He also questioned the 10:00 PM time limit, wondering how that time was picked. Ms. Ekblad answered and said it is only a starting point for discussion. Mr. Ryffel asked if there was a difference between being on that side of Estero Blvd. and being on the beach side. Ms. Ekblad said she thinks there is, at least in this situation since there is a residential community close by and it is on a canal.

Ms. Shamp asked if staff looked at the retention concerns there. Mr. Fluegal said he did have staff look at it immediately and all agreed that there were no problems. Ms. Shamp noted that there could be some buffering options in the landscape plan as part of the conditions to help in modifying the noise.

Ms. Kay reminded that the LPA had been trying to do away with specific hours for specific businesses to the point where there would be a unified code of opening and closing. She pointed out that, legally the applicant can be open until 2:00 AM and wondered if their focus is now going back to restricting these things. Mr. Fluegal commented that he is not aware of any uniform conditions in the Code, other than the absolutes of 2:00 AM to 7:00 AM rules, and said that while reviewing this particular application, it became obvious that more sensitivity was in order because of the location being at the end of a residential canal in a residential area. He added that this is exactly the purpose of the process, to be aware of certain special exception needs. Ms. Kay is still concerned about consistency in the future and Mr. Fluegal agreed, adding that there still needs to be a case-by-case review for fairness.

Mr. Kakatsch asked how is the deck accessed and how does the applicant control who goes in and out. Mr. Fluegal answered and said he understood there was an opening near the front door, and that is the staff recommendation (see diagram being referred to).

Mr. Van Duzer agreed with the staff report and is satisfied. Ms. Shamp asked for the percentage of food to alcohol served, which is 49% alcohol and 51% food.

**Motion: Mr. Van Duzer moved to approve the special exception, with stipulated conditions #2 (sales service and consumption of alcoholic beverages) and #4 (music and Entertainment), as recommended by staff.**

**Seconded by Mr. Ryffel;**

**Ms. Kay added that speakers be directed towards Estero Blvd., if used, and a landscaping plan includes buffering and Mr. Van Duzer amended his motion to include these.**

**Vote: Motion passed 6-0.**

Ms. Shamp realized that she neglected to ask for public comment and, before closing, did so. Mr. David Easterbrook did the drawings for the deck and addressed the meeting. He said that he designed the deck specifically with the view and location in mind. He said that a buffering landscape plan would block the view and that the proposed handrail would also not be attractive; he doesn't see the need for these things. Ms. Shamp said that this will come up in the permitting process and that would be when to bring it up. Mr. Zuba suggested a "living fence" of sorts.

Mr. James Bailey addressed the meeting as said he resides within 500 ft. of the subject. He fully supported the LPA's decision.  
Hearing closed at 9:58 AM.

**B. Raking Ordinance-Chapter 14 LDC**

Staff presented Affidavit of Publication of Public Hearing and the attorney read the caption for the record, Section 14-1 through 6. Mr. Keith Laakkonen presented the draft information on behalf of the staff and gave a brief history of the origin. He said that as it exists now, the LDC requires mechanical beach rakers to get a permit from the Town of FMB; however, due to vagueness in the code no such permits have actually been issued by the Town. The issues at hand include defining the wrack line and regulations regarding proximity of raking, etc. to that line, allowing for 1 raker to rake several properties without needing additional permits, setting specific time frames, etc. MRTF had been tasked with looking into this more than a year ago and has held several workshops and public meetings to clarify terms.

The board decided to open the floor to comment before their discussion.

Public comment:

Bill Perry addressed the meeting as the main beach raker and gave a history of how the raking regulations came to be. He said that the LDC regulations were basically taken from the DEP's regulations when it was decided that the DEP would no longer be involved locally. Later, that changed and the DEP did regulate, requiring permits for beach raking. Dr. Shockey had decided the Town should again regulate the raking but Mr. Perry opined that this is not necessary when the DEP already regulates raking. He said it is excess paperwork and an unfair tax on the waterfront property owners being charged for a permit that they get from the state for free. He said that every year he rakes each property on the entire beach, taking a staff member with him and photographing his work; this, he says is enough for the DEP. He explained that the process he has been using for the past few years has satisfied the DEP and is well documented. Mr. Perry does not understand why the Town needs to charge the property owners for a permit when they pay him to rake the beach; he believes they feel that they are providing a service to the community, especially when the public

uses the beach. Mr. Perry said that he objects to a decision by MRTF at the most recent of several meetings he attended, to restrict his hours of raking and not allow it after sunset or before sunrise. He said this restricts his access to bare beach before people and children arrive. He added that he constantly polls the property owners and has never had a complaint about raking in the evenings. He added that he would certainly not object to the Town requiring him to have lighting and insurance after dusk but cannot go along with not being allowed to do this at night at all. He is against the issuing of permits for raking by the Town but agrees with the regulation of the actual tractor and requiring a license or permit to engage in that business in the beach.

Larry Crossman, owner Estero Island Beach Villas, said that he does not agree with restricting raking to daytime only and sees no problem with Mr. Perry's raking at night. He is pleased with Perry's services and his conscientious work.

Kenneth Edge from the Dolphin Watch Condo Assn. spoke on behalf of himself and a few other residents in the audience from the same association. He added that he was also representing a few in the room from Island Shores. He said the county sent them a letter back in October which asked them to sign a temporary construction permit for the beach renourishment project. As an incentive for doing so, those signing would receive benefits of the vegetation plan of FMB. He said that this meant the signers would maintain existing raking abilities and could continue to rake as they did in the past, with no additional cost. Mr. Edge said he had conversations with a few people at the county level who assured him that this would be the case and under the 15 pg. Beach Management Plan, it states the same thing. He feels that they were "duped" since now the Town wants to charge these residents for raking and said he and the others are very upset and concerned about this.

Jeff Werner, Chairman of MRTF, addressed the meeting and referred to Section 14-1c of the LDC, which he read part of, *"any mechanical beach raking requires a permit from the Town."* He added that there was no actual system in place for this so staff asked MRTF to develop a permit and process for this purpose to be added to the LDC. He said that after public meetings MRTF found that it is dangerous to rake after dark. Moreover, there is illegal raking taking place in the area of Leonardo Arms and MRTF feels that this permitting process will allow the Town to enforce illegal beach raking.

Toby ??? , ??? Park Beach Club, said that he believes that the beach has been raked in the dark and the light for at least 25 years and nothing bad has happened. He said that the attractiveness of the beach depends on raking, especially for tourists, and he believes that birds will nest when the beach is clear and clean. He feels that just considering the amount of beach that needs to be raked, there needs to be raking at different times. He sees no sense in predicting the future and guessing that there *may* be a problem when for 25 years there has been no problem.

Dan Hughes, President of Smuggler's Cove Condo Assn., said that he feels that the



permitting issue would not be an issue if the state was enforcing their permit requirements. He said that the state overrides the local, of course and feels that a permit is not a prerequisite to enforcing the other provisions of the code. He added that it is not a good time to impose additional fees on the residents in this economy.

George Reppetti, President of Island's End Condo Assn., said that there is no need for more government intrusion into the rights of property owners on the island. He said that he is worried that if the Town has the authority to deny Mr. Perry from cleaning his beach that he might have a problem due to his opposition to the bird sanctuary. He said that when he rakes his beach, he gets more business and all of the money comes back to the community. He said there were visitors to his beach last year who complained about not being able to walk in the grassy mess that is Castle Beach and Carlos Point. He said that those people said that the birds (terns) were coming down and attacking people on the beach.

Artis Chester stated that she is a "private property owner" and does not need a permit to take care of her own property and doesn't want the Town to step in and tell her how to do it. She said Mr. Perry maintains her property and has increased its worth with his services. She wants no part of the extra taxes.

Lauralee Saderfield, Pres. of Castle Beach Condo Assn., stated that she is next to Carlos Point and very much involved in the bird issue. She said she has "an issue" with the Town wanting to step in and charge residents who have been working with the Town to maintain the beach is not proper. She said she is in favor of allowing the raking to continue as it is going now, praising Perry's services. She believes the Town will ruin the cooperation that they have now between the Town and the beach residents who are trying to accommodate the birds and the other issues.

Ray Murphy said that he only wants to address the night time raking and said it is a great service, out of turtle season. He also praised Mr. Perry's reputation and his services and supports Perry's need to tend to the beach at all hours when people are not around.

Sherrie Addias wished to address private property rights. She said that although she applauds the Town's efforts to generate revenue, she doesn't agree with doing that by taxing the "already strapped" property owners. She alluded to other possible extra taxes/charges that may come about if the Town is allowed to institute this process and finds it unfair to charge residents for things that they already do to keep the property in good condition.

Public comment closed. Ms. Shamp asked for staff comments.

Mr. Laakkonen clarified that the DEP regulations only cover turtle season and not the rest of the year. He referred to earlier comments dealing with comments by DEP that they would not regulate raking and said that if that does happen in the future, this would give them a set of rules to protect the beach. He said this is not a new

regulation and is has been on the books for some time. He said that this set of rules will have no affect on the north end for those who signed the easement agreements. Mr. Laakkonen agreed that the comments regarding the birds are correct and a very unique situation exists on the south end. The nighttime raking came up as a safety issue and liability was considered. He pointed out that he gives an option for night raking in the recommendations allowing for inspections of the lighting, etc. on the tractors to be sure they are safe.

#### LPA discussion:

Ms. Shamp thanked the public for their involvement and concern. She referred to LDC Sec. 34-12, the objectives of Town Planning and the creation of the LPA were to further the welfare of the citizens of the Town and to "promote a better, more helpful, convenient and efficient environment..." She said that this does create an additional layer of government, however, protection of the environment is valuable and they need to find a balance. On the other hand, she said, the island has been gaining more and more beachfront since Hurricane Charlie alone. She said that Lee County actually expects that the property owners maintain their beaches and read a quote from Lee Co. Parks and Rec: *"the county considers that owners of private beachfront property be responsible for raking the beach behind their homes. They are responsible for gathering up all raked beach debris and hauling it off the beach. If the debris is algae or other vegetation, that debris can be set out for horticultural or curbside pickup."* She gave more examples of this expectation throughout the state for coastal communities and said that there is no doubt that raking should be controlled by the Town during turtle season but that the DEP also regulates raking outside of the season. Marco Island staff rakes the beaches, Long Boat Key rakes as needed, and there were more examples but she said that "we are the economic engine for Lee County and for SWFL" and there needs to be a balance between environmental interests and commercial interests. Ms. Shamp said there is no doubt that raking must be controlled during raking season but the DEP also controls it after turtle season and they allow hand-raking by property owners. She read a note from the previous Environmental Services Director, from August 2007, which specifically stated that FDEP mandates that *"maintenance done by hand outside of nesting season is exempt."* FL Statute 161.241 says that *"possession of sea oats is illegal unless it is by the property owner, or permission of the owner."*

Ms. Shamp showed photos of properties of her property and the surrounding lots, showing the different results of raking an un-raked beach area. She continued to be adamant that raking is a maintenance right as well as a service that she provides to the Town and all beach visitors. She referred to the LDC wherein it regulates what trees you can have on your own private property and wondered if permits would also be needed for tree cutters every time they cut trees. In addition, she pointed out the same concern with regard to the fertilizer ordinance and said that she feels very strongly about private property rights. Ms. Shamp also agrees that the only reason the Town was brought into this was "because the FDEP stopped doing its job" but it has since started doing its job again and has regulations for raking. She suggested revised

wording of the ordinance to be “any mechanical beach raking requires a permit from the FDEP,” and not from the Town. She also expressed concern with Section 14-6 Ab “under normal circumstances, the raking of the wrack line is prohibited; no mechanical or hand raking may take place seaward of the wrack line or within 10 ft. landward.” She said that as a property owner, she is allowed to hand rake and that term should not be in that section. Ms. Shamp was emotional in expressing her concern for the safety of children who may be hurt by a raking machine or other equipment because the workers are restricted to daytime hours when the beaches are full. She pressed on that FMB is not only a family and tourist beach but an environmental sanctuary, needing to protect nature as well as generate economic/revenue streams, while still protecting property rights of its residents. Her comments drew applause from the room.

Mr. Ryffel handed out some photos as he said this ordinance is a “duplication of effort” and he would not vote for it. He also agreed that restricting raking after dark is ridiculous, pointing out that holes in the sand dug by beachgoers are a much more serious problem. Mr. Ryffel went on to agree with many of Ms. Shamp’s comments and added that the ordinance should be reworded at some point.

Mr. Zuba expressed a desire to learn more about precedence as far as other towns and what they experience with these policies before he would decide on this ordinance.

Mr. Van Duzer wondered why this is actually before the LPA since the state had decided to oversee this and agrees with Mr. Ryffel that this is a duplication of efforts. He believes that the raker (business owner) should be responsible for the licensing, liability insurance and other permitting needed, not the Town.

Mr. Kakatsch agreed with all of the comments in that there is no need for more regulation. He asked about the Town liability in the case of the holes dug in the sand. Ms. Miller gave general explanation of the limited liability for this.

Ms. Kay was not aware that the state had issued permits and asked if it is a year-round permit. Mr. Laakkonen said it is year round but the conditions that apply to it are only during turtle season and the rest of the year is not regulated. Raking by hand is regulated but mechanical is not regulated by the state. There was discussion about the raking and how it affects the wrack line. Mr. Laakkonen gave some details about the wrack line and how it is vital to the health of the beach and life of the wildlife. Ms. Kay would like to see this not changed in the LDC and wondered why there couldn’t be regulation without permitting. Ms. Miller answered that this would require the property owner to be liability then instead of the raker.

Ms. Shamp again said that beach raking is an important issue and should be part of the LDC, although she personally does not support the present ordinance. She approves of the proposed definition of “wrack” but feels that there is still conflicting opinion of it and a great deal of confusion.

Mr. Fluegal commented that hearing all of the input today helped him realize what concerns are more important than others to property owners and where the priorities lie. Basically, this section of the code either needs to be fixed or eliminated and he wants to fix it. Ms. Miller pointed out that the document is marked "draft" and it had been advertised as a public hearing, which is the only way to get public input. She asked for LPA opinion as which way to proceed.

Mr. Zuba asked if a motion to table this would be appropriate at this point, with direction to staff to clarify some issues before any action. Mr. Kakatsch asked why the Town is not providing the raking service in an organized regulation if it is such an important need. There was discussion about the option of the Town taking over the raking, using a contractor. Mr. Laakkonen said that cities of Naples and Marco do rake their own beaches and places like Sanibel and Captiva do not allow raking at all.

Mr. Ryffel opined that this is a "hot button" to push and said that "people have property rights and why do they have to allow a Town tractor to ride on their property," adding that "that's just as bad as getting these easements..." (inaudible due to applause). He feels it should be left to private business.

Ms. Shamp asked for a consensus as to the action to be taken in this matter. No members were ready to vote for the present option to be passed. Mr. Zuba wanted more information and recommended that, in its present form, the LPA not pass it. Mr. Ryffel agreed and said they need to recommend to Council that it needs to be redrafted and again taken to MRTF.

**Motion: Mr. Zuba moved that the LPA reject the draft amendment to the LDC Section 14-1 through 14-6, as it is currently written.**

**Seconded by Mr. Van Duzer;**

**Mr. Zuba revised his motion to reject the ordinance as currently written and advise staff to include the following elements in any proposal in the future: insurance regarding any beach raking by machine; some description of various option precedence that exist in area communities that have addressed this issue; the hours of operation. Ms. Shamp added removal of the term "or hand-raking in Sec. 14-6a (b) ;" and in Sec. 14-6c change to read "any beach mechanical raking requires a permit from the FDEP" and not the Town; consideration that no Town permit be required; Sec. 14-6e needs clarification, regarding fines. Mr. Ryffel suggested striking the time restrictions after dark, outside turtle season. All agreed that it then return to the LPA for review/approval.**

**Motion maker and seconder agree to revisions;**

**Vote: Motion passed 6-0.**

Hearing closed at 11:35 AM.

Short recess until 11:47 AM.

**C. Hearing FMB SEZ2010-0003 Mermaid Lounge and Liquors**

The attorney swore in witnesses and noted existence of the Affidavit of Publication of

Public Hearing. Members were polled for any ex-parte communications with Ms. Shamp only having a site visit.

Applicant Scott Van Sella addressed the members and referred to paperwork sent to staff prior to the meeting, which shows the proposed addition to the rear of the property, including a handicapped access ramp, restrooms, a tiki hut and a small kitchen.

Mr. Ryffel asked if the deck is level or elevated and was told it is off the ground. Ms. Shamp asked if there was currently music outside, other than special events. Applicant replied that special events are the only time when there is music, so far.

Mr. Fluegal spoke for the staff and commented for the record that his wife is the insurance agent for the applicant's homeowner's policy but that it has no bearing on the issue. He turned the floor over to Ms. Leslie Chapman, new Zoning Coordinator, who began by making a correction in the staff report on pg. 3, last paragraph; the use should be bar/cocktail lounge use. She stated that the property is within 500 ft. of an adjoining property under separate ownership and the request is for outdoor consumption on premises in the downtown district. She showed photos and gave details of the request as it refers to the regulations.

Mr. Van Duzer noted that time references for music or outdoor entertainment in the recommendation be changed from 11:00 AM to 9:00 PM instead of 10:00 PM. The applicant said he's like it to remain at 10:00 PM but the staff recommends the earlier time due to the business location.

Mr. Kakatsch asked about a beach house in front of the building and was told it is a rental, which the applicant owns. He suggested that the speakers be turned away from properties.

Ms. Kay noted that this is further expansion of consumption on the beach and asked if the deck is surrounded by wall on 3 sides. The applicant said that is correct and only the beach side is open.

Mr. Ryffel asked why these time restrictions are can't just be the same as all the other businesses there. He said this is an "intensive area" and that's where the music should be.

Mr. Zuba asked for clarification as to the location of the fencing. Mr. Fluegal answered that it is just for the deck area and Mr. Zuba asked for more details regarding lighting, landscaping, etc. The applicant explained using his visual display and there was discussion about the parking area landscaping.

Ms. Shamp commented that the plan looks nice and will improve the property. She reminded that the letter previously read into the record (see pg. 2) from Mr. Gannon, is also noted for this case too.

Mr. Kakatsch asked if the beach house was part of the commercial area. The applicant said that it is but that they obtain proper permitting for special occasions.

Public comment was opened; same was closed with no comments.

LPA discussion:

Approval as it is conditioned would allow outdoor entertainment until 10:00 PM and the applicant asked if it could be 11:00 PM on Friday and Saturday nights only.

Discussion ensued about the time restrictions.

**Motion: Mr. Van Duzer moved to approve the staff recommendation, specifically, #1-the area of the subject property used for outdoor consumption must be confined entirely to proposed deck and tiki hut shown on survey and referenced as Exhibit A; the area will be enclosed with a 42" railing across the beach side only, except for access points further delineating the outdoor consumption area from other outdoor areas; #2-sales, service and consumption of alcoholic beverages must not begin earlier than 9:00 AM and must end no later than 2:00AM each day; #3-music or other audible entertainment prohibited before 10:00AM and after 10:00PM on Sunday through Thursday nights and 11:00AM to 11:00PM on Friday and Saturday nights, and all outdoor seating areas must comply with all Town noise Ordinances; #4-provide the Town with a copy of the state permit for construction within the CCI.**

**Seconded by Mr. Kakatsch;**

**Ms. Kay again stated that she is not happy with further expansion of alcohol on the beach.**

**Vote: Motion passed 6-0.**

**Motion: Mr. Zuba moved to request that the applicant provide the Town with a landscape plan with emphasis on addressing Estero Blvd. frontage.**

**Seconded by Ms.Kay;**

**Mr. Fluegal commented that this is a mitigation measure for the granting of the exception for the DL plan.**

**Vote: Motion passed 6-0.**

Hearing closed at 12:21PM.

**Motion: Mr. Ryffel moved to break for lunch.**

**Seconded by Mr. Zuba;**

**Vote: Motion passed 6-0**

Lunch recess 12:22 PM.

Reconvene at 12:50 PM.

D. Sign Ordinance

Staff provided a copy of the Affidavit of Publication of Public Hearing. Mr. Van Duzer commented that this should not be at the public hearing level for today, as indicated in the minutes. Ms. Shamp agreed and referred to Mr. Fluegal who explained that Town Council directed the sign ordinance focus on only constitutional issues at this point. Council wanted this done immediately so that enforcement can commence now. Ms. Shamp said that the LPA appreciates Council's input and direction but that they are not pleased with their insistence on holding a public hearing on this one meeting sooner than they had planned. She added that she is very pleased with the format used by Ms. Miller in presenting this ordinance.

Ms. Miller gave a brief overview of the document where there were strike outs, etc. Again, members were reminded that they were dealing today only with issues of constitutionality. Mr. Fluegal gave options for moving forward and making the ordinance enforceable.

Ms. Shamp suggested going over the document page by page and asking for comments; Mr. Ryffel and the other members agreed (refer to the draft). Mr. Zuba asked what the budget is for enforcement and what has been the experience in terms of costs. Mr. Fluegal replied that Council directed him to "do this and enforce it," which he said the Town will do within current budgetary restraints, adding that there will be no proposal asking for more code enforcement officers, although he is still working on how to do all of this. He said that one area they are working on is more cooperation and working with property owners to help them comply rather than just imposing fines. More discussion ensued regarding code compliance with signs.

Ms. Kay asked how this code can be enforced if there are not to be fines. Ms. Miller added that there is a process that there are notices and other actions before the fines are actually imposed.

The group began the review and nothing was noted until page 4 where a question was raised about the identification sign and there was discussion about the use of terms for this type of sign.

Page 5: parasite sign; there was a question as to the definition; it is prohibited.

Page 7 there was an elimination of a paragraph and Ms. Miller explained why this was taken out. There was discussion about "sandwich board signs" and how this should be handled.

Page 12-"posted property" signs were discussed and compared to "incidental" signs.

Page 13-Ms. Kay questioned the size restrictions here and Ms. Miller explained that this regards "free speech" signs and where they are allowed. Mr. Ryffel disagreed with some of these sizes and Ms. Miller agreed that this needs to be revised, defining it as a "No Parking" sign. More discussion took place here.

Page 17-ID sign needs to have a permit attached on the upper right corner.

Pgs. 18-20-scratched out.

Page 21-Ms. Shamp was not happy with the proposed change in the description of the role of the LPA as pertains to the HPB and signs here. More discussion took place

about historically significant signs and the involvement of the LPA/HPB in this process. All agreed that the role of the Council should only be hearing appeals after the decision of the LPA/HPB, and that Council not have the final say. There was a unanimous consensus that the process should remain the same as it was, with no change.

Page 23-Mr. Van Duzer questioned the measurement of sign heights and feels there needs to be an area for special exemption status. All other pages were reviewed and there were a few other comments to be considered in the recommendations to Council, including addressing the bench signs.

**Motion: Mr. Ryffel moved to approval of Sec. 30-1 Sign Ordinance, as amended by the LPA attorney with changes noted from LPA discussion.**

**Seconded by Mr. Kakatsch;**

**Vote: Motion passed 6-0.**

Hearing closed at 2:12 PM.

#### **V. ADJOURN AS LPA AND RECONVENE AS THE HPB**

**Motion: Mr. Van moved to adjourn as LPA and Reconvene as HPB.**

**Seconded by Mr. Zuba;**

**Vote: Motion passed 6-0.**

Meeting commenced at 2:13 PM. Ms. Kay stated that she and Mr. Fleugal met with HAC and discussed parking and the signs. Mr. Fluegal suggested February for the next designation it would be Carter Cottage; if so, staff would work on the list of invitees.

Mr. Fluegal discussed more permanent types of monument plaques and there was discussion about researching grants for this purpose as well as vista signs.

Ms. Kay polled the members for opinions as to scheduling the charettes. She said they have use of the Newton House for this purpose. The consensus was they be held after tourist season, perhaps planning during the off-season.

**Motion: Ms. Kay moved to adjourn as HPB and reconvene as the LPA.**

**Seconded by Mr. Van Duzer;**

**Vote: Motion passed 6-0.**

#### **VI. ADJOURN AS HPB AND RECONVENE AS THE LPA**

Meeting was reconvened at 2:25 PM, with the same members still present.

#### **VII. LPA MEMBER ITEMS AND REPORTS**

Mr. Kakatsch said he read the Sandpaper and wants the LPA to make a recommendation to the mayor regarding the library. Ms. Kay reminded that the library is a separate tax area and she feels it is not within their scope of responsibility to do so. Mr. Kakatsch read an excerpt from the paper which indicates that the Town attorney recommended discussions between the Town and the library. Ms. Miller said there is an item on the



upcoming work session regarding this; Jim Humphrey has done a memo about certain requirements that apply to different tax districts, according to the FL Statutes and this applies to any cooperation between libraries and their districts, etc. She added that although the library is technically in a separate district, there is some responsibility to local agencies and this will be discussed at the Council meeting. Ms. Shamp said that this is really out of the boundaries of the LPA.

Ms. Kay asked if there is a rental fee for outsiders to use the pool, etc. and there was brief discussion about that.

Mr. Ryffel asked for excused absence for the next meeting as he will be out of town.

#### **VIII. LPA ATTORNEY ITEMS**

Ms. Miller had nothing to report.

#### **IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Mr. Fluegal gave had a few items to add to the LPA Action list. The Council rejected the LPA's recommendation that COP's on the beach should be further restricted as directed staff to create an ordinance to address this but he wasn't sure when this will be done. Ms. Shamp advised that when it does come before the LPA, they will need a very thorough presentation with all needed information. Brief discussion ensued about the process.

There is some work being done on the various beach ordinances like Jet Ski and other rental businesses there and parasailing is at the top. Mr. Fluegal said that the Code Enforcement ordinance also needs strengthening. Ms. Shamp noted that many of the topics are controversial and asked if they will have some preparation in the form of workshops, hearings, etc. Mr. Fluegal agreed and said that most will have workshops but that some of the non-controversial ones may just come to the LPA with a Public Hearing.

#### **X. LPA ACTION LIST REVIEW**

- Special exceptions-Surf Club and Mermaid Lounge-Van Duzer/Kay
- Beach raking TBD

##### **Future Work Activities**

- Shipwreck-Continued at LPA request-May 10, 2011
- ROW Residential Connection; Van Duzer-TBD
- LDC 613-14 10-25 Storm Water-TBD
- Parasail, jet ski ordinances-TBD; Fluegal
- Sign ordinance-Ms. Miller; TBD
- Post-disaster reconstruction/recovery-TBD; Ms. Miller

#### **XI. PUBLIC COMMENT**

No comment.

## **XII. ADJOURNMENT**

**Motion:** Mr. Kakatsch moved to adjourn.

**Seconded by** Mr. Ryffel;

**Vote:** Motion passes 6-0.

Meeting adjourned at 2:53 PM. Next meeting February 8, 2011.

Adopted \_\_\_\_\_ with/without changes. Motion by \_\_\_\_\_  
(DATE)

Vote: \_\_\_\_\_ Signature: \_\_\_\_\_

- End of document

**FORT MYERS BEACH, FLORIDA  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
ZONING STAFF REPORT**

**TYPE OF CASE:** Special Exception

**CASE NUMBER:** FMBSEZ2010-0005 (Surf Club)

**COUNCIL HEARING DATE:** February 7, 2011

**COUNCIL HEARING TIME:** 9:00 AM

**I. APPLICATION SUMMARY:**

Applicant: Cermak's Surf Club, LLC.

Request: Special Exception in the DOWNTOWN zoning district to allow consumption on premises of alcoholic beverages in a restaurant providing an outdoor seating area within 500 feet of dwelling unit under separate ownership.

Subject property: Crescent Park Addition  
Lot 1 Block E Plat Book 4 Page 46

Physical Address: 1167 Estero Boulevard, Fort Myers Beach, FL 33931

STRAP #: 19-46-24-W4-0150E.001A

FLU: Pedestrian Commercial

Zoning: DOWNTOWN

Current use(s): Restaurant with 4COP beverage license

**Adjacent zoning and land uses:**

Adjacent properties are designated as Pedestrian Commercial on the Future Land Use Map (FLUM)

North: Canal

South: Mixed Use; Downtown

East: Hotel/Motel Use; Downtown

West: Mixed Use, Downtown

## **II. BACKGROUND AND ANALYSIS**

### **Background:**

The subject property is located at 1167 Estero Boulevard, within the Times Square area (i.e. the Downtown Core area) as described in the Comprehensive Plan. The building is the former Waffle House which was approved by Lee County Community Development on June 22, 1998.

The applicant purchased the property in April 2009.

In May 2009 the applicant, having possession of a 4COP liquor license, applied for and was granted, through the administrative approval process, consumption on premises (FMBCOP2009-0001) with food. The COP was granted subject to the following conditions:

1. *All requirements of LDC Section 34-1264(k) are incorporated herein by reference and the subject establishment must comply with these requirements at all times.*
2. *Consumption on premises on the subject property is limited to a restaurant within the exterior walls of the existing building (shown by the attached **Exhibit B**). Any expansion of the area designated for consumption on premises will require a new approval in compliance with all applicable requirements of the LDC at that time.*
3. *Sales, service, and consumption of alcoholic beverages on the subject property are prohibited between the hours of 2:00 AM and 9:00 AM of each day.*
4. *No outdoor areas and no areas that are less than fully enclosed on the subject property are approved for consumption on premises.*
5. *Alcoholic beverage consumption on premises on the subject property is approved in conjunction with a restaurant use as defined in the LDC only. Alcoholic beverage consumption on premises in conjunction with any other use, specifically including but not limited to a bar or cocktail lounge, will require a new approval in compliance with all applicable requirements of the LDC at that time.*

The applicant is proposing to construct a 645 square foot deck on the subject property and is requesting a special exception for outdoor consumption on premises for the proposed deck area. In the site plan, provided by the applicant and labeled **Exhibit B**, the proposed deck would be located over an existing dry retention area.

Analysis:

The regulations of the DOWNTOWN zoning district (Chapter 34 Section 678) encourage restaurants to provide outdoor seating areas located on porches or patios, largely between enclosed buildings and the street.

This vicinity is one of the most intensive commercial areas of the Town, and aside from a minimal number of residential units, is located generally away from the intensely residential areas of the island. Other restaurants and bars serving alcohol on the premises, many of which include outdoor seating areas, are located in Times Square and on Old San Carlos Boulevard to the north, and on both sides of Estero Boulevard to the south. Therefore, the request for outdoor consumption on premises is appropriate at this location.

The sidewalks on both sides of Estero Boulevard, the availability of seasonal commercial parking lots, and the popular use of the beach near the County fishing pier and Lynn Hall Park, help to attract beach-going pedestrians to the area. The applicants' restaurant is one among a large number of commercial uses in this part of the Town, several of which have outdoor seating near the beach. The presence of visiting pedestrians transitioning between parking areas, retail stores, restaurants, the beach, and nearby motels, is a long-established custom that will not be altered by approval or denial of the current request. The immediate vicinity is within the Pedestrian Commercial future land use category and the Comprehensive Plan's vision of this area encourages commercial uses. Furthermore, the Comprehensive Plan specifically contemplates that the Times Square area (Downtown Core) include a more intensive mix of commercial uses including outdoor cafes.

The applicant indicates their intent is to operate between the hours of 11:00 am and 12 midnight. These hours are within the external limit set via Ordinance 96-06 prohibiting service between 2:00 am and 7:00 am daily throughout the Town. Although the applicant has provided these operation hours and therefore is willing to abide by them, these hours (or any other hours outside of 7am to 2am daily) cannot be limited without the Town Council finding such a condition necessary to protect the public health, safety, and welfare. Further, while the applicant has not requested music or any other audible outdoor entertainment uses, Staff suggests that due to the subject property's location at the terminus of a canal and with regard to the existing residential uses further to the east, Town Council should condition outdoor music and audible entertainment hours as well as standard operating hours.

The proposed deck area indicated on the attached site plan as **Exhibit B**, is the only area proposed to be used for outdoor consumption and is the sole area being considered by this application. The proposed deck will add an additional 645 square feet to the existing restaurant use. Currently, the subject property provides 15 parking spaces onsite. When subject to the applicable parking requirements found in chapter 34-2020

and 34-676, the proposed additional use area does not require additional parking spaces. As with the existing approval, outdoor consumption on premises is required to occur in conjunction with a restaurant as defined in the LDC 34-1264.

In the past, Lee County and the Town have issued location-specific approvals for alcoholic beverage uses which have sometimes contained limitations on the number of seats and the type and/or series of license. It is possible these conditions were an effort to limit potentially adverse effects on neighboring properties and possibly to aid with enforcement issues involving unauthorized expansions. Staff does not recommend including conditions to limit the number of seats or the type and/or series of state beverage license. The seating area can be limited by reference to the applicant's site plan, which clearly delineates the seating area. In the future, it is possible that changes to the type of seats used in the seating area or amendments to the building code could allow a somewhat different seating capacity within the same floor area. In addition, a future restaurant operator may acquire a different type or series of state beverage license and use it in conjunction with a restaurant use, either to serve beer only, to serve beer and wine, or to serve beer, wine, and liquor. The LDC does not distinguish between restaurants that serve beer, restaurants that serve beer and wine, and restaurants that serve beer, wine, and liquor. As a result, Staff has no basis in policy to develop theories or evidence to support the notion that locations serving beer only, beer and wine only, or beer, wine, and liquor, should be regulated differently by the Town.

Findings and Conclusions:

1. *Whether there exist changed or changing conditions [that] make approval of the request appropriate.*

The Comprehensive Plan notes in the Consensus on Commercial Uses: "The present concentration of commercial uses in the Times Square area is good for Fort Myers Beach. Despite severe congestion during peak season and a general seediness that had been developing, Times Square has always provided an urban beach environment that does not exist anywhere else in Lee County, and which cannot be easily duplicated because of today's floodplain regulations. The recent CRA improvements have sparked a renewed interest in Times Square among most islanders and has spurred a healthy movement to upgrade existing buildings."

Also, as contemplated in the Comprehensive Plan, the Times Square area (Downtown Core) has continued to emerge as a vibrant urban core for the Town. Therefore, the area can support a more intensive mix of uses which is consistent with the applicant's request.

2. *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

The applicant's request for outdoor consumption on premises is fitting with the vision for the area. The subject property is located in the Times Square area (Downtown Core). The Comprehensive Plan describes a vision for this area that "boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an 'Old Estero Island' character to the buildings."

Further, in both the Community Design Element and the Future Land Use Element, the Comprehensive Plan describes a vision for the Times Square area (Downtown Core) as a "nucleus of commercial and tourist activities" with pedestrian oriented commercial uses that enhance the experience of both the resident and visitor. Again, the applicant's request is consistent with this vision, by providing additional venue for the enjoyment of the outdoor environment of Fort Myers Beach.

3. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The very nature of this application indicates that the requested use of outdoor consumption on premises is not a use allowable by right on the subject property. It is however, a use permitted by special exception. The applicant's request is appropriate at this location due to the subject property's location in the Times Square area (Downtown Core) and is consistent with the goals, objectives, policies and intent of the Comprehensive Plan; which describes a vibrant tourist commercial district.

4. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The proposed outdoor consumption application will have virtually no negative effects on environmentally critical areas and natural resources. The subject property is within an existing commercial district and the proposed deck is to be located on an area of the site that was previously disturbed.

5. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The subject property and the area immediately surrounding it are within the Pedestrian Commercial future land use category. The Comprehensive Plan's vision for the Times Square area (Downtown Core) encourages commercial

uses be maintained and/or increased, including outdoor cafes. Staff feels the applicant's request is compatible with the area and its vision.

6. *Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.*

The outdoor consumption on premises of alcoholic beverages on the subject property will be required to comply with the applicable standards in the Fort Myers Beach LDC including but not limited to 34-678(7)(e)(1), 34-678(7)(e)(4), and 34-1264. Staff recommends finding that the requested use, as conditioned, is in compliance with applicable zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

### **III. LOCAL PLANNING AGENCY DISCUSSION**

On January 11, 2011, the Local Planning Agency held a public hearing regarding the Special Exception. The Agency discussed the following items:

- A landscape plan should be submitted providing buffering for the canal and adjoining uses. Buffering should be for the purposes of aesthetics as well as noise mitigation.
- Standards should be implemented regarding the hours consumption and music are permitted for restaurants and bars. It is difficult to enforce conditions regarding hours of operation and service when they vary depending on the approval and establishment.
- Speakers located on the outdoor deck should be located to carry sound toward Estero Boulevard rather than surrounding uses.

Comments were received regarding the buffering discussion. A member of the public requested the buffer in front of the canal be "light" in an effort to maintain the view from the outdoor patio. The agency agreed with this comment and requested the applicant to consider a "living fence" or landscape border.

The Local Planning Agency voted 6-0 to approve the special exception with the conditions as listed below. Conditions 1 through 5 were proposed by staff. Condition 6 was added by the Agency.

### **IV. RECOMMENDATION**

With consideration to the current and existing conditions, Staff recommends **APPROVAL** of the requested Special Exception to allow the consumption on premises of alcoholic beverages in a restaurant providing outdoor seating areas within 500 feet of dwelling unit under separate ownership. Limitations on the outdoor seating area for



consumption on premises are for Town Council to determine at public hearing. If the Town Council chooses to approve the requested special exception, staff recommends the approval be subject to the following conditions:

1. The area of the subject property used for outdoor consumption on premises must be confined entirely to the proposed deck shown on the site plan attached hereto and incorporated herein by reference as **Exhibit B**. This area will be enclosed with a 42 inch railing, except for access points, further delineating the outdoor consumption area from other areas of the subject property.
2. Sales, service, and consumption of alcoholic beverages must not begin earlier than 11:00 AM and must end no later than 10:00 PM each day.
3. The use must comply at all times with the provisions of LDC Section 34-1264(k), as may be amended from time to time, and must at all times in operation be licensed as a permanent public food service establishment with seating, in accordance with Chapter 509, *Florida Statutes*, and applicable state agency rules.
4. Conditions in prior approvals including the applicant's May 29, 2009 COP (FMBCOP2009-0001) will remain in effect except where voided by this action.
5. Music and other audible entertainment are prohibited before 11:00 AM and after 9:00 PM of each day in outdoor seating areas, and must comply at all times with applicable noise ordinances.
6. A landscaping plan is to be provided at the time of development order or permit.

#### **V. CONCLUSION:**

Regulations for the DOWNTOWN zoning district encourage outdoor dining, and many restaurants have followed the vision of the Comprehensive Plan in accordance with these regulations and are providing outdoor seating areas where alcoholic beverages are served as a part of a menu of full-course meals as required by LDC Section 34-1264(b)(2).

If Town Council finds that the requested use is contrary to the public interest or the health, safety, comfort, convenience, and/or welfare of the citizens of the Town, or that the request is in conflict with the criteria of LDC Section 34-88 regarding Special Exceptions, Town Council should deny the request as provided in LDC Section 34-88(4). If Town Council chooses to approve the request, special conditions necessary to protect the health, safety, comfort, convenience, or welfare of the public may be attached if Council finds that such conditions are reasonably related to the requested special exception. Staff has recommended conditions for the Town Council's convenience and

consideration. Staff's recommended condition limiting the hours for sales, service, and outdoor consumption of alcoholic beverages on the premises is based upon the general policy established by the Town Council in Ordinance 96-06 Town of Fort Myers Beach Liquor License Restriction.

Staff recommends **APPROVAL** of the requested special exception, as conditioned.

Exhibits:

Exhibit A – Legal Description

Exhibit B – Site Plan

1453  
-2008-  
Prepared by and return to:  
Title Professionals of Florida  
13241 University Drive, Suite 103  
Fort Myers, Florida 33907  
incidental to the issuance of a title insurance policy.  
Parcel Identification Number: 19-46-24-W4-0150E.001A  
File Number: 09001942TPF

(Space Above This Line For Recording Data)

## Warranty Deed

This Warranty Deed made this 10th day of April, 2009, by

J.Harold Chastain, Individually and as Trustee of the JHC 2003 Trust dated April 9, 2003,

hereinafter called the GRANTOR, to

Cermak's Surf Club, LLC.,

whose post office address is 1167 Estero Blvd., Fort Myers Beach, FL 33931,  
hereinafter called the GRANTEE:

(Whenever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations.)

Witnesseth, that the GRANTOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable considerations receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the GRANTEE, all that certain land, situate in Lee County, Florida, viz:

A lot or parcel of land comprised of part of Lot 1, Block "E" of CRESCENT PARK ADDITION, according to a map or plat thereof recorded in Plat Book 4, page 46, of the Public Records of Lee County, Florida, and part of the reserved strip of area lying East of said Block "E" and West of Block "D" of said Crescent Park Addition and part of the vacated street or drive lying between said reserved strip and said Block "E" and part of the unused street or drive lying between said reserved strip and Block "D", and part of the canal right-of-way shown on said plat, which lot or parcel is described as follows: From the SW Corner of said Block "E" run Southeasterly along the North line of Estero Boulevard for 80 feet to the Point of Beginning of the lands herein described: From said Point of Beginning, run North parallel with the West line of said Block "E" for 76.34 feet to a point on a prolongation of the line dividing the North 1/2 and the South 1/2 of Lot 2 of said Block "E"; thence run East along said prolongation for 137.5 feet to a point 112.68 feet West of the East line of said Block "D" thence run South 112.68 feet from and parallel with said East line of Block "D" for 126.75 feet to a point on the North line of Estero Boulevard, which point is 120 feet Northwesterly along said boulevard from the Southeast corner of said Block "E", thence run Northwesterly along said boulevard for 146.45 feet to the Point of Beginning.

This property is not the homestead of the Grantor(s) nor is it contiguous to the homestead of the Grantor(s).

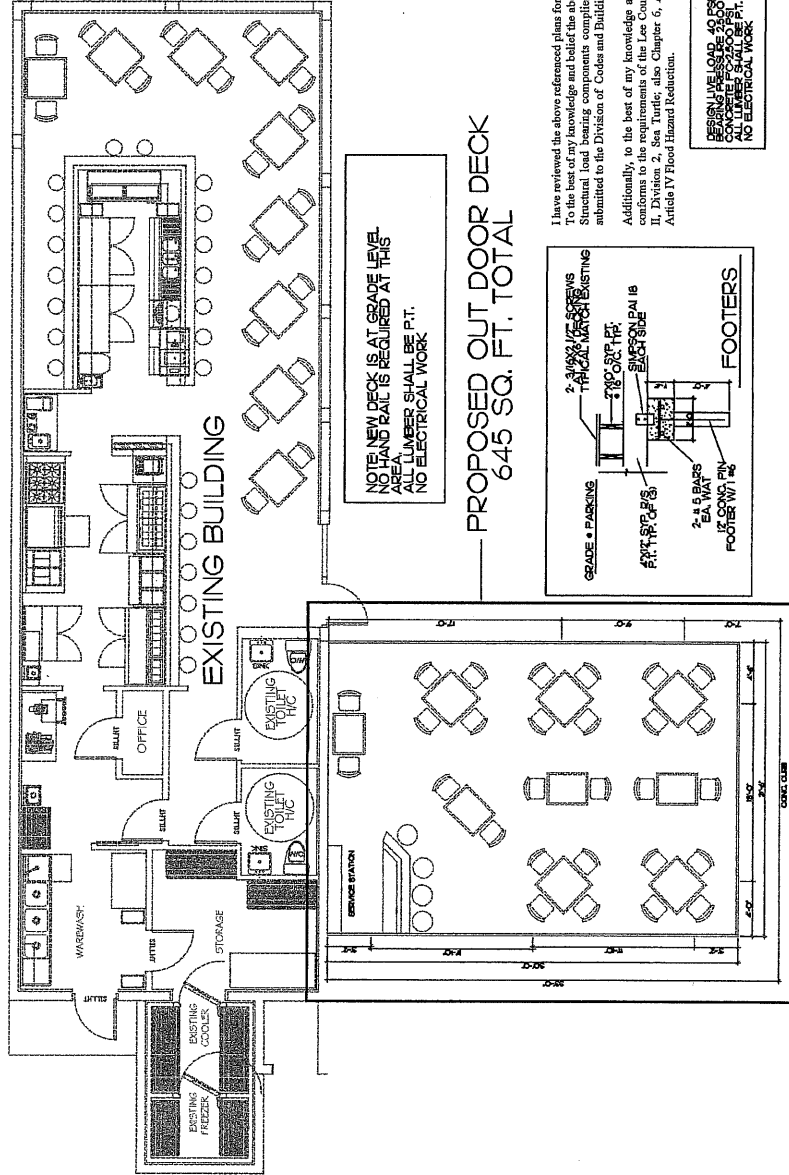
SUBJECT TO covenants, conditions, restrictions, reservations, limitations, easements and agreements of record, if any; taxes and assessments for the year 2008 and subsequent years; and to all applicable zoning ordinances and/or restrictions and prohibitions imposed by governmental authorities, if any.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

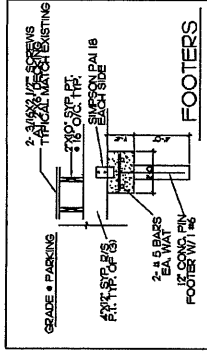
AND THE GRANTOR hereby covenants with said GRANTEE that except as above noted, the GRANTOR is lawfully seized of said land in fee simple; that the GRANTOR has good right and lawful authority to sell and convey said land; that the GRANTOR hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever.

Exhibit B



NOTE: NEW DECK IS AT GRADE LEVEL.  
NO HAND RAIL IS REQUIRED AT THIS  
DECK.  
ALL LUMBER SHALL BE P.T.  
NO ELECTRICAL WORK

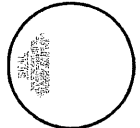
PROPOSED OUT DOOR DECK  
645 SQ. FT. TOTAL



I have reviewed the above referenced plans for the coastal compliance requirements.  
To the best of my knowledge and belief the above described construction of all  
Structural load bearing components complies with the permitted documents and plans  
submitted to the Division of Codes and Building Services.

Additionally, to the best of my knowledge and belief the above described construction  
conforms to the requirements of the Lee County Development Code, Chapter 14, Article  
II, Division 2, Sea Turret, also Chapter 6, Article III Coastal Construction Code, and  
Article IV Flood Hazard Notification.

DESIGN LIVE LOAD 40 PSF  
CONCRETE FLOORING  
NO LUMBER SHALL BE P.T.  
NO ELECTRICAL WORK



S-1  
SHEET NO.

DATE: 05/11/2011  
TIME: 10:00 AM  
PROJECT: CERMA'S SURF CLUB  
DRAWN BY: J.C. KOSINSKI  
CHECKED BY: J.C. KOSINSKI  
APPROVED BY: J.C. KOSINSKI

CERMA'S SURF CLUB  
167 Estero Blvd., Fort Myers, Florida  
ESTERO, BLVD.  
FT. MYERS BEACH  
LEE COUNTY, FLORIDA

J.C. KOSINSKI ENGINEERING, INC.  
JOSEPH C. KOSINSKI, PE  
1300 GULFVIEW AVE  
FORT MYERS BEACH, FLORIDA 33931  
(888) 483-1704 (239) 463-2760  
THIS PLAN HAS BEEN REVIEWED  
AND APPROVED BY THE  
ENGINEER AND SUPERVISOR

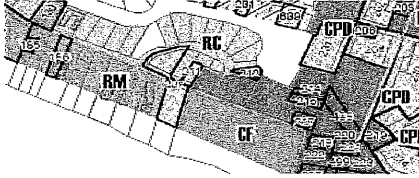
REVISIONS

NOTED: ENGINEERS SHALL HAVE PRESIDENCE OVER SCALE DIMENSIONS. CONTRACTOR SHALL VERIFY AND BE RESPONSIBLE FOR DIMENSIONS AND CONDITIONS OF THE JOB. "J.C. KOSINSKI ENGINEERING, INC." MUST BE NOTED IN WRITING OF ANY VARIATION IN THE DIMENSIONS, CONDITIONS AND MATERIALS. ENGINEERS SHALL HAVE PRESIDENCE OVER SCALE DIMENSIONS. CONTRACTOR SHALL VERIFY AND BE RESPONSIBLE FOR DIMENSIONS AND CONDITIONS OF THE JOB. "J.C. KOSINSKI ENGINEERING, INC." MUST BE NOTED IN WRITING OF ANY VARIATION IN THE DIMENSIONS, CONDITIONS AND MATERIALS. ENGINEERS SHALL HAVE PRESIDENCE OVER SCALE DIMENSIONS. CONTRACTOR SHALL VERIFY AND BE RESPONSIBLE FOR DIMENSIONS AND CONDITIONS OF THE JOB. "J.C. KOSINSKI ENGINEERING, INC." MUST BE NOTED IN WRITING OF ANY VARIATION IN THE DIMENSIONS, CONDITIONS AND MATERIALS.

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**Town of Fort Myers Beach**  
Department of Community Development



Zoning Division

**Application for Public Hearing**

This is the first part of a two-part application. This part requests general information required by the Town of Fort Myers Beach for any request for a public hearing. The second part will address additional information for the specific type of action requested.

<b>Project Name:</b> <i>CERMAKS Surf Club LLC</i>
<b>Authorized Applicant:</b> <i>BRUCE CERMAK</i>
<b>LeePA STRAP Number(s):</b> <i>19-46-24-W4-0150E.001A</i>

<b>Current Property Status:</b>
<b>Current Zoning:</b> <i>DOWN TOWN</i>
<b>Future Land Use Map (FLUM) Category:</b> <i>PEDESTRIAN COMMERCIAL</i>
<b>Platted Overlay?</b> <i>X</i> yes ___ no <b>FLUM Density Range:</b>

Action Requested	Additional Form Required
<input checked="" type="checkbox"/> Special Exception	Form PH-A
<input type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

**Town of Fort Myers Beach**  
**Department of Community Development**  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931  
(239) 765-0202

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

## PART I – General Information

### A. Applicant:

Name(s):	Carmar's Surf Club LLC / Bruce Carmar		
Address: Street:	1167 Estero Blvd.		
City:	Ft. Myers Beach	State:	FL - Zip Code: 33931
Phone:	239 463 9256		
Fax:	239 463 3118		
E-mail address:	BruceCarmar@AOL		

### B. Relationship of applicant to property (check appropriate response)

<input type="checkbox"/> Owner (indicate form of ownership below)	
<input type="checkbox"/> Individual (or husband/wife)	<input type="checkbox"/> Partnership
<input type="checkbox"/> Land Trust	<input type="checkbox"/> Association
<input type="checkbox"/> Corporation	<input type="checkbox"/> Condominium
<input type="checkbox"/> Subdivision	<input type="checkbox"/> Timeshare Condo
<input type="checkbox"/> Authorized representative (attach authorization(s) as Exhibit AA-1)	
<input type="checkbox"/> Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)	
<input type="checkbox"/> Town of Fort Myers Beach (Date of Authorization: _____)	

### C. Agent authorized to receive all correspondence:

Name:	William E. Whitley		
Mailing address: Street:	22501 Buccaneer Lagoon		
City:	Ft. Myers Beach	State:	FL - Zip Code: 33931
Contact Person:	Gene Whitley		
Phone:	463-0203	Fax:	463 5010
E-mail address:	Call 980-0375		

### D. Other agents:

Name(s):	Dave Easterbrook		
Mailing address: Street:	123 Pavilion Ave		
City:	Ft. Myers Beach	State:	FL - Zip Code: 33931
Phone:	239 980-3091	Fax:	
E-mail address:	Five Beach Bums @ AOL.Com		

Use additional sheets if necessary, and attach to this page.

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

## PART II – Nature of Request

Requested Action (check applicable actions):

<input checked="" type="checkbox"/> Special Exception for: <i>outside Alcohol Consumption w/ Food</i>
<input type="checkbox"/> Variance for:
<input type="checkbox"/> Conventional Rezoning from _____ to: _____
<input type="checkbox"/> Planned Development _____
<input type="checkbox"/> Rezoning (or amendment) from _____ to: _____
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to: _____
<input type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain):

## PART III – Waivers

**Waivers from application submittal requirements:** Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director's approval(s) as Exhibit 3-1.

Code Section Number	Describe Item

## PART IV – Property Ownership

<input type="checkbox"/> <b>Single owner</b> (individual or husband and wife)
Name: _____
Address: _____ Street: _____
City: _____ State: _____ Zip Code: _____
Phone: _____ Fax: _____
E-mail Address: _____

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

<input type="checkbox"/> Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

## PART V – Property Information

### A. Legal Description of Subject Property

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes:
Subdivision name: <u>Cresant Park Addition</u>
Plat Book Number: <u>4</u> Page: <u>46</u> Unit:    Block: <u>E</u> Lot: <u>1</u>
If no:
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

### B. Boundary Survey

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida.
--

### C. STRAP Number(s):

<u>19-46-24-W4-D150E.001A</u>
-------------------------------

### D Property Dimensions:

Area:	<u>9800 +/-</u>	square feet	<u>.22</u>	acres +/-
Width along roadway:	<u>131</u>	feet +/-	Depth: <u>103</u>	feet +/-

### E. Property Street Address:

<u>1167 Estero Boulevard</u>
------------------------------



Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):**

Attach Area Location Map as Exhibit 5-3

**G. Property Restrictions (check applicable):**

<input checked="" type="checkbox"/> There are no deed restrictions or covenants on this property that affect this request.
<input type="checkbox"/> Restrictions and/or covenants are attached as Exhibit 5-4
<input type="checkbox"/> A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

**H. Surrounding property owners:**

Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6
Attach two sets of mailing labels as Exhibit 5-7
Attach a map showing the surrounding property owners as Exhibit 5-8

**I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)**

<input type="checkbox"/> Low Density	<input type="checkbox"/> Marina
<input type="checkbox"/> Mixed Residential	<input type="checkbox"/> Recreation
<input type="checkbox"/> Boulevard	<input type="checkbox"/> Wetlands
<input checked="" type="checkbox"/> Pedestrian Commercial	<input type="checkbox"/> Tidal Water
<b>Is the property located within the "Platted Overlay" area on the Future Land Use Map?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

**J. Zoning: (see official zoning map, as updated by subsequent actions)**

<input type="checkbox"/> RS (Residential Single-family)	<input type="checkbox"/> CM (Commercial Marina)
<input type="checkbox"/> RC (Residential Conservation)	<input type="checkbox"/> CO (Commercial Office)
<input type="checkbox"/> RM (Residential Multifamily)	<input type="checkbox"/> CB (Commercial Boulevard)
<input type="checkbox"/> VILLAGE	<input type="checkbox"/> SANTINI
<input type="checkbox"/> SANTOS	<input checked="" type="checkbox"/> DOWNTOWN
<input type="checkbox"/> IN (Institutional)	<input type="checkbox"/> RPD (Residential Planned Dev.)
<input type="checkbox"/> CF (Community Facilities)	<input type="checkbox"/> CPD (Commercial Planned Dev.)
<input type="checkbox"/> CR (Commercial Resort)	<input type="checkbox"/> EC (Environmentally Critical)
<input type="checkbox"/> BB (Bay Beach)	

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

## PART VI – Affidavit

### Application Signed by a Corporation, Limited Liability Company (LLC), Limited Company (LC), Partnership, Limited Partnership, or Trustee

See attached explanatory notes for instructions

I, Bruce Cermak, as mgr / owner  
of Cermak's Surf Club LLC, swear or affirm under oath, that I am  
the owner or the authorized representative of the owner(s) of the property and  
that:

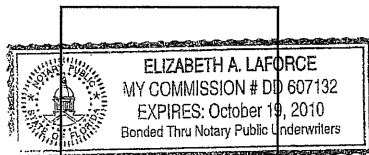
1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data, or other supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action

Cermak's Surf Club LLC Bruce Cermak  
Name of Entity (corporation, LLC, partnership, etc) Signature  
mgr / owner Bruce Cermak  
Title of Signatory Typed or Printed Name

State of FL  
County of LEE

The foregoing instrument was sworn to (or affirmed) and subscribed  
before me this 3-26-10 by Bruce Cermak  
Date Name of person under oath or affirmation  
who is personally known to me or who has produced  
Type of identification  
as identification.

Elizabeth A. LaForce ELIZABETH A. LAFORCE  
Signature of person administering oath Typed or Printed Name

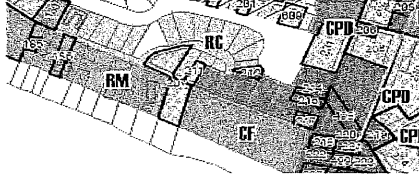


SEAL:

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**Town of Fort Myers Beach**  
Department of Community Development



Zoning Division

**Supplement PH-A**

**Additional Required Information for a  
Special Exception Application**

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name: <u>CERMAKS Surf Club LLC</u>
Authorized Applicant:
LeePA STRAP Number(s): <u>19-46-24-W4-0150E.001A</u>

Current Property Status:
Current Zoning: <u>TOWN TOWN</u>
Future Land Use Map (FLUM) Category: <u>Pedestrian Commercial</u>
Platted Overlay? <u>X</u> yes <u>  </u> no FLUM Density Range:

**Requested Action:**

<input type="checkbox"/> Use of premises in the EC (Environmentally Critical) zoning district for:
<input type="checkbox"/> Use of premises in the _____ zoning district for:

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

PART I  
Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

Construct outside deck (645 Sq. Ft.) with
Seating for 60 With Alcohol Consumption
and Food
Outside Seating for 48 on Street Side
12' Service bar on deck to Accommodate Above Seating
Outside operation Hours 11 <sup>AM</sup> to 12 AM
(midnight)

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:
These Requests follow the down Town
Comprehensive Plan

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**Granting the requested Special Exception could impact surrounding properties as follows:**

<i>No perceived Impact</i>

**PART 2**  
**Submittal Requirements**

All applications for a special exception must submit fourteen (14) copies of this application form and all applicable exhibits.

**Required Items**

- Public Hearing Request Form
- Supplemental form PH-A
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; all proposed structures and uses for the site; and any proposed fencing and screening.

**For New Communication Towers:**

- a. Lee County Application for Communication Tower
- b. Shared-Use Plan Agreement

**For Consumption of Alcoholic Beverages (COP) license approval:**

- a. Notarized authorization from the Property Owner to apply for permit
- b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

**For transit terminals:**

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

**For use of the EC zoning district:**

- a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
- b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

## Guide to Filing Supplement PH-A for Special Exceptions

**Case Number** will be inserted by Community Development staff.

**Project Name** must be the same as the name used on the Request for Public Hearing form.

**Authorized Applicant** must be the same as on the Request for Public Hearing form.

**STRAP numbers** must be the same as on the Request for Public Hearing form.

**Current status of property** must be the same as on the Request for Public Hearing form.

**Requested Action:** Indicate the nature of the request and include the current zoning of the property.

### Part 1 Narrative Statements:

#### **"Request for..."**

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

#### **"The property qualifies for a special exception because..."**

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

**“Granting the requested special exception could impact surrounding properties as follows...”**

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

## **Part 2 Submittal Requirements**

**Public Hearing Application Form.** Applications for special exception consist of the Public Hearing form and the supplemental form PH-A. Both parts of the application form must be completed and submitted.

**Site Plan.** The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.



1442  
2008-  
Prepared by and return to:  
Title Professionals of Florida  
13241 University Drive, Suite 103  
Fort Myers, Florida 33907  
incidental to the issuance of a title insurance policy.  
Parcel Identification Number: 19-46-24-W4-0150E.001A  
File Number: 09001942TPF

(Space Above This Line For Recording Data)

## Warranty Deed

This Warranty Deed made this 10th day of April, 2009, by

J. Harold Chastain, Individually and as Trustee of the JHC 2003 Trust dated April 9, 2003,

hereinafter called the GRANTOR, to

Cermak's Surf Club, LLC.,

whose post office address is 1167 Estero Blvd., Fort Myers Beach, FL 33931,  
hereinafter called the GRANTEE:

(Whenever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations.)

Witnesseth, that the GRANTOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable considerations receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the GRANTEE, all that certain land, situate in Lee County, Florida, viz:

A lot or parcel of land comprised of part of Lot 1, Block "E" of CRESCENT PARK ADDITION, according to a map or plat thereof recorded in Plat Book 4, page 46, of the Public Records of Lee County, Florida, and part of the reserved strip of area lying East of said Block "E" and West of Block "D" of said Crescent Park Addition and part of the vacated street or drive lying between said reserved strip and said Block "E" and part of the unused street or drive lying between said reserved strip and Block "D", and part of the canal right-of-way shown on said plat, which lot or parcel is described as follows: From the SW Corner of said Block "E" run Southeasterly along the North line of Estero Boulevard for 80 feet to the Point of Beginning of the lands herein described; From said Point of Beginning, run North parallel with the West line of said Block "E" for 76.34 feet to a point on a prolongation of the line dividing the North 1/2 and the South 1/2 of Lot 2 of said Block "E"; thence run East along said prolongation for 137.5 feet to a point 112.68 feet West of the East line of said Block "D" thence run South 112.68 feet from and parallel with said East line of Block "D" for 126.75 feet to a point on the North line of Estero Boulevard, which point is 120 feet Northwesterly along said boulevard from the Southeast corner of said Block "E", thence run Northwesterly along said boulevard for 146.45 feet to the Point of Beginning.

This property is not the homestead of the Grantor(s) nor is it contiguous to the homestead of the Grantor(s).

SUBJECT TO covenants, conditions, restrictions, reservations, limitations, easements and agreements of record, if any; taxes and assessments for the year 2008 and subsequent years; and to all applicable zoning ordinances and/or restrictions and prohibitions imposed by governmental authorities, if any.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND THE GRANTOR hereby covenants with said GRANTEE that except as above noted, the GRANTOR is lawfully seized of said land in fee simple; that the GRANTOR has good right and lawful authority to sell and convey said land; that the GRANTOR hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, GRANTOR has hereunto has signed and sealed these presents the date set forth above.

Signed, sealed and delivered in our presence:  
(TWO WITNESSES REQUIRED)

WITNESSES:

Robert J. McGinley  
Signature of Witness  
Printed Name of Witness: ROBERT J. MCGINLEY

J. Harold Chastain  
J. Harold Chastain, Individually and as Trustee

Donna J. Davis  
Signature of Witness  
Printed Name of Witness: Donna J. Davis

STATE OF FLORIDA

COUNTY OF Manatee

I hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared J. Harold Chastain, Individually and as Trustee of the JHC 2003 Trust dated April 9, 2003, known to me to be the person(s) described in and who executed the foregoing instrument, who acknowledged before me that: he, she and/or they, executed the same, and an oath was not taken. (Check one) ☒ Said person(s) is/are personally known to me.

Said person(s) provided the following type of identification  
WITNESS my hand and official seal in the County and State last aforesaid this 3<sup>rd</sup> day of April, 2009.

Donna J. Davis  
Notary Public

Printed Name: Donna J. Davis

My Commission Expires: July 31, 2011

SEAL

